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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

FATTEN (LEILA) PABLO,

Plaintiff and Respondent,

v.

ANTON HANDAL,

Defendant and Appellant.

C057910

(Super. Ct. No.
06AS00670)

Following a court trial, the trial court found defendant Anton Handal liable for committing numerous acts of sexual battery against plaintiff, defendant's daughter, while she was between the ages of 10 and 12 years old. The court entered judgment in favor of plaintiff and awarded her damages in excess of \$2 million.

Defendant appeals from the judgment, claiming the trial court abused its discretion in two respects: (1) by denying defendant's pretrial motion to withdraw admissions the court had

earlier deemed admitted; and (2) by refusing to allow defendant to introduce evidence at trial disputing the deemed admissions. We affirm the judgment.

BACKGROUND INFORMATION

We note initially that defendant is appealing based on a partial clerk's transcript. He has not provided us with a reporter's transcript or with the declarations and exhibits plaintiff filed with the trial court in opposition to his motion.¹

Since the record furnished by defendant consists only of a partial clerk's transcript, "this is a 'judgment roll' appeal, in which we undertake our review with the presumption that the judgment is correct and supported by the evidence at trial." (*Waller v. TJD, Inc.* (1993) 12 Cal.App.4th 830, 832.) If no reversible error of law appears on the face of the record, we must affirm. (*Bond v. Pulsar Video Productions* (1996) 50 Cal.App.4th 918, 924.)

In her complaint filed February 15, 2006, plaintiff alleged defendant committed numerous sexual batteries upon her over a two-year period as well as intentionally inflicted emotional

¹ Defendant asks us to take judicial notice of his petition for writ of mandamus filed in this court on August 16, 2007. (C056548.) We grant the request (Evid. Code, § 452, subd. (d)), but note the petition suffers from the same defect as the partial transcript submitted here on appeal.

distress. She sought general and special damages and attorney fees.

Defendant, then in pro per, filed an answer on April 7, 2006, and denied all of the accusations.

Apparently, in January 2007, plaintiff served a request for admissions on defendant. Defendant, who was still representing himself, did not respond to the request for admissions.

Plaintiff filed a motion with the trial court pursuant to Code of Civil Procedure section 2033.280, subdivision (b), to have her request for admissions deemed admitted due to defendant's failure to respond. Defendant did not file an opposition.²

The trial court granted plaintiff's motion. It deemed the request for admissions admitted unless, prior to the hearing on the motion, defendant served proposed responses that complied with the requirements of section 2033.220. The court's order was filed on April 24, 2007. Defendant did not file any proposed responses to the requests at that time.

Sometime during April 2007, defendant hired his current attorney, Robert Biegler. Defense counsel claimed he first learned of plaintiff's motion to have her request for admissions deemed admitted when he received a copy of the court's order on

² Further undesignated references to sections are to the Code of Civil Procedure.

the motion on April 26, 2007. By letter the same day, defense counsel asked plaintiff's counsel to set aside the court's order voluntarily or else he would bring a motion for relief.

In her respondent's brief, plaintiff claims her attorney responded to defense counsel's April 26 letter with a letter of his own dated April 30 refusing to set aside the court's order. (Defendant did not include in the record copies of any correspondence sent by plaintiff's counsel.)

The parties allegedly exchanged letters in May, defense counsel again asking for plaintiff to set aside the order, and plaintiff's counsel refusing the request. (No copies of these letters are in the record.) No discussions occurred in June because plaintiff's counsel was on vacation that month.

Defense counsel wrote again on July 5, 2007, and again asked plaintiff's counsel if he was willing to set aside the court's order voluntarily. Plaintiff's counsel allegedly responded and again refused the request. Defense counsel wrote one more time, this time requesting a mutually agreeable date for the court to hear a motion by him to set aside the admissions.

Defendant filed his motion to withdraw the deemed admissions on July 26, 2007. He apparently sought to have the

motion heard ex parte, as trial was scheduled for less than one month away.³

Defense counsel declared under penalty of perjury he did not receive copies or notice of plaintiff's motion from either defendant or plaintiff's counsel. He contacted plaintiff's counsel immediately upon receiving a copy of the order and asked him to set aside the admissions voluntarily, but "[n]o agreement was reached."

Defendant declared under penalty of perjury he received a "tremendous amount of paperwork" from plaintiff's counsel in January 2007, but he did not understand what he was supposed to do with it. Because the paperwork contained many questions that were the same or similar to questions plaintiff's counsel had asked him in a deposition, defendant did not believe he had to answer the written questions.

Following a hearing on August 8, 2007, the trial court denied defendant's motion. It determined defendant had not been diligent in bringing the motion in a timely matter once

³ Defendant claimed he brought his motion pursuant to section 2033.5, subdivision (m). However, section 2033.5 was repealed effective July 1, 2005. (Stats. 2004, ch. 182, § 22.) That statute also did not contain a subdivision (m). (Stats. 1998, ch. 587, § 2; Stats. 2001, ch. 812, § 11.) Nevertheless, the language that defendant stated in his motion was from section 2033.5, subdivision (m), was actually from former section 2033, subdivision (m) (Stats. 1991, ch. 1090, § 13, p. 5088), which is now codified without substantial change and in relevant part at section 2033.300, subdivisions (a) and (b). We will presume the motion was made and decided under section 2033.300.

plaintiff's counsel informed defendant's new counsel of his refusal to set aside the order, and defendant had offered no explanation for the delay. The court also stated that defendant's ignorance of the significance of the admissions while he was in pro per was not convincing and was not a proper ground for granting his motion, as the rules of civil procedure apply equally to represented litigants and pro per litigants.⁴

After this ruling but prior to trial, defendant filed an in limine motion seeking an order "delineating the scope and effect of the deemed admitted admissions. Specifically Defendant requests that the Court allow Defendant to contradict and/or explain said Admissions with other evidence/testimony."

Defendant argued the trial court retained discretion to determine the scope and effect of the deemed admitted admissions. He asserted he had earlier denied each of the allegations contained in the request for admissions in his answer and during his deposition. Thus, any contradictory evidence he sought to introduce would not be prejudicial to plaintiff's case.

The record does not indicate whether the court ruled on defendant's in limine motion. Defendant asserts the court denied his motion.

⁴ Defendant's writ petition to our court was a challenge to this ruling. We denied the petition on August 17, 2007.

At trial, the court determined the deemed admitted admissions were factual. Based on this evidence as well as testimony presented at trial, the court determined that defendant had sexually assaulted plaintiff on over 100 separate occasions when she was 10 to 12 years old. It awarded plaintiff \$15,452.50 in special damages, and \$2,000,000 in general damages, along with costs of suit.

DISCUSSION

I

Motion to Withdraw Deemed Admitted Admissions

Defendant claims the trial court abused its discretion when it denied his motion to withdraw the admissions the court had earlier deemed admitted. He asserts he established the admissions were the result of mistake, inadvertence, or excusable neglect, and that plaintiff would not be substantially prejudiced if the court granted his motion. We conclude on this record the trial court did not abuse its discretion.

Section 2033.300 authorizes a party to withdraw an admission, but only on leave of court after notice to all parties. (§ 2033.300, subd. (a).) The court may permit withdrawal of an admission "only if it determines that the admission was the result of mistake, inadvertence, or excusable neglect, and that the party who obtained the admission will not

be substantially prejudiced in maintaining that party's action" (§ 2033.300, subd. (b).)⁵

The trial court in effect concluded defendant had not demonstrated that the admissions resulted from mistake, inadvertence, or excusable neglect. Defendant's testimony was "not convincing" and failed to demonstrate why the court should have excused him from not following the procedural rules all litigants must follow. Defendant had also given no reason why he had waited to file his motion until there was less than a month before trial.

The trial court's determination, in its legal discretion, that defendant failed to establish mistake, inadvertence, or excusable neglect is a determination based upon all of the facts before the court. By submitting only a partial clerk's transcript on this appeal, defendant has failed to provide us with the full record on which we could review the court's exercise of discretion based on all of the facts. Accordingly, we must presume sufficient facts support the court's determination, and we affirm the court's decision on that basis.

⁵ Plaintiff initially contends defendant cannot obtain relief under section 2033.300 because he did not actually respond to the request but had his admissions deemed so by the court. Plaintiff is incorrect. Section 2033.300, the successor to former section 2033, subdivision (m), provides relief from deemed admissions. (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 979.)

II

In Limine Motion to Contradict Deemed Admitted Admissions

Defendant contends the trial court erred when it refused to allow him to introduce evidence at trial that contradicted the admissions the court had deemed admitted. He claims the case of *Fredericks v. Kantos Industries, Inc.* (1987) 189 Cal.App.3d 272 (*Fredericks*), authorized the court to take his requested action.

Plaintiff counters that the holding of *Fredericks* is significantly more limited; it grants a court discretion to determine the scope and effect of admissions only when an admission may be susceptible to more than one meaning. Plaintiff claims her request for admissions were unambiguous and required no interpretation.

We need not decide the effect of *Fredericks* to resolve this matter. Assuming only for purposes of argument that the court had discretion to grant defendant's in limine motion, we cannot ascertain from this record whether the court abused its discretion in denying the motion. Nowhere in the record is the court's ruling noted or explained. Indeed, even the actual requests for admission are omitted from the record.

As the appellant, defendant bore the burden and duty to provide us with an adequate record. His failure to do so triggers a presumption that all facts necessary to support the judgment were admitted and relied upon by the trial court. Under that presumption, we cannot say the court abused its discretion when it denied defendant's in limine motion.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to plaintiff. (Cal. Rules of Court, rule 8.278(a).)

NICHOLSON, Acting P. J.

We concur:

ROBIE, J.

BUTZ, J.